IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 3 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF GIFT TAX

Versus

RAMANBHAI T PATEL

Appearance:

1. GIFT TAX REFERENCE No. 3 of 1995
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA
Date of decision: 29/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions have been referred for our opinion for assessment year 1982-83 :-

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the debit balances of retiring partners amounting to Rs.3,50,581/- are not a deemed gift within the meaning of section 4(1)(c) of the Gift Tax Act and hereby whether the Tribunal is right in cancelling the assessment order ?

(2) Whether, on the facts in the circumstances of the case, the Tribunal is right in holding that the assessee's case is covered by exceptional circumstances noted in section 4(1)(a) of the Gift Tax Act ?"

2. The assessee was one of the partners of M/s KC Ken Engg. Co. The firm was dissolved w.e.f. 31.3.1981 and the assessee took over the assets and liabilities of the firm from 1.4.1981 as a proprietary concern. As per clause 5 of the Dissolution Deed, the debit balances in the cases of four partners shall not be required to be paid by the continuing partner i.e. the assessee and the same would be included in the accounts of the assessee. The total debit balance in the accounts of four partners amounted to Rs.3,50,581/-. Since the assessee had foregone the liabilities of the partners on taking over the firm on dissolution, the Income-tax Officer was of the view that the debit balance of the retiring partners were deemed gift under Section 4(1)(c) of the Gift Tax Act to the assessee. The Income-tax Officer accordingly subjected the amount of Rs.3,50,581/to gift tax. On appeal, the Deputy Commissioner of Income-tax (Appeals) upheld the order of the GTO in treating the foregoing right of the assessee towards debit balance of retiring partners as deemed gift under Section 4(1)(c) of the Act. On further appeal, the Tribunal found that the dissolution deed of the firm was dated 31.3.1981 and hence the deemed gift was wrongly charged to tax in assessment year 1982-83 and allowed the assessee's appeal on merits also and also on the period of taxability. Hence, this reference at the instance of the revenue.

3. We have heard Mr MR Bhatt, learned standing counsel for the revenue. Though served, none appears for the respondent-assessee.

Mr Bhatt submitted that since the retiring partners had foregone the debit balance totalling about Rs.3,50,581/-, there was deemed gift by the retiring

partners in favour of the assessee who took over the assets and liabilities of the firm w.e.f. 1.4.1981 as a proprietary concern. Mr Bhatt, therefore, submitted that the transaction was rightly treated as a gift for the assessment year 1982-83. On merits also, Mr Bhatt submitted that the assessee agreeing not to recover the amounts of debit balance standing in the names of the outgoing five partners, have to be treated as gift as the case would fall under Section 4(1)(c) of the Gift Tax Act, 1958 which reads as under :-

"Gift to include certain transfers.

4.(1) For the purposes of this Act,-

(c) Where there is a release, discharge, surrender, forfeiture or abandonment of any debt, contract or other actionable claim or of any interest in property by any person, the value of the release, discharge, surrender, forfeiture or abandonment, to the extent to which it has not been found to the satisfaction of the Gift-tax Officer to have been bona fide, shall be deemed to be a gift made by the person responsible for the release, discharge, surrender, forfeiture or abandonment."

4. The Tribunal held that since the dissolution deed was dated 31.3.1981, the alleged gift took place in the assessment year 1981-82. Apart from that finding, the Tribunal also held the transaction to be a bona fide business transaction and, therefore, the case would come out of Section 4(1)(c). Although the Tribunal did not give a specific finding, the Tribunal did note the submission made on behalf of the assessee that on dissolution of the firm, the assessee took over the fixed assets at book value which was substantially below the market value and in consideration of this concession to him, he agreed not to recover the amounts of debit balances standing in the name of outgoing five partners. The Tribunal, therefore, held that such bona fide balance transactions are not caught by the mischief of deemed gift under Section 4(1)(c).

5. Having heard the learned counsel for the revenue, we are of the view that since the Tribunal has found on facts that the transaction in question was a bona fide transaction and that there was adequate consideration for the assessee foregoing the debit balances of retiring

partners amounting to Rs.3,50,581/-, the Tribunal was right in cancelling the assessment order.

6. Accordingly we answer both the questions in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-